



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0924; FRL-9698-2]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;
Nonattainment New Source Review; Fine Particulate Matter (PM_{2.5})**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. These revisions pertaining to Pennsylvania's nonattainment New Source Review (NSR) program incorporate preconstruction permitting regulations for fine particulate matter (PM_{2.5}) into the Pennsylvania SIP. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID **EPA-R03-OAR-2011-0924**. All documents in the docket are listed in the www.regulations.gov website.

Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State

submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 84268, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by e-mail at duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On March 29, 2012 (77 FR 18987), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of a SIP revision pertaining to Pennsylvania’s nonattainment New Source Review (NSR) program which incorporates preconstruction permitting regulations for fine particulate matter (PM_{2.5}) into the Pennsylvania SIP. The formal SIP revision was submitted by Pennsylvania on September 23, 2011.

The purpose of this SIP is to incorporate the nonattainment preconstruction permitting requirements for PM_{2.5} that are set forth in the federal rules, “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” (NSR PM_{2.5} Rule), which was published on May 16, 2008 (73 FR 28321).

II. Summary of SIP Revision

The SIP revision submitted by Pennsylvania consists of amendments to the general provisions of 25 Pa. Code Chapter 121 and major nonattainment NSR permitting regulations of 25 Pa. Code Chapter 127. The amendments establish the major source thresholds, significant emission rates and offset ratios for PM_{2.5} and its precursors. They also establish nitrogen oxides (NO_x) and

sulfur dioxide (SO₂) as precursors to PM_{2.5}, and establish procedures for interpollutant trading for offsets, pursuant to the NSR PM_{2.5} Rule. Clarifying amendments for Chapter 127 and minor editorial changes also are made. The amendments submitted by Pennsylvania for approval into the SIP became effective on September 3, 2011.

Other specific requirements of the regulations and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. One public comment was received on the NPR. The comment did not directly relate to the SIP revision so no response to the comment is necessary.

III. Final Action

EPA is approving the September 23, 2011 SIP revision to incorporate federal preconstruction permitting requirements for PM_{2.5} and its precursors in nonattainment areas along with clarifying amendments, at 25 Pa. Code Section 121.1 and 25 Pa. Code Chapter 127, subchapter E, as a revision to the Pennsylvania SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed and shall not postpone the effectiveness of such rule or action. This action pertaining to NSR requirements for PM_{2.5} may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2012

W. C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. In § 52.2020, the table in paragraph (c)(1) is amended by revising the existing entries for Title 25, Sections 121.1, 127.201, 127.201a, 127.202, 127.203, 127.203a, 127.204, 127.206, and 127.210.

The amendments read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) ***

(1) ***

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25-- Environmental Protection				
Article III--Air Resources				
Chapter 121 - General Provisions				
Section 121.1	Definitions	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Added definition of PM _{2.5} , modified definitions of “regulated NSR pollutant” and “significant,” and removed existing term, “maximum allowable emissions.”
* * * *	* * *			
Chapter 127- Construction, Modification, Reactivation and Operation of Sources				

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* * * * *				
Subchapter E - New Source Review				
Section 127.201	General requirements	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.201a	Measurements, abbreviations and acronyms	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.202	Effective date	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.203	Facilities subject to special permit requirements	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.203a	Applicability determination	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
Section 127.204	Emissions subject to this Subchapter	9/3/11	[Insert Federal Register publication date] [Insert page number where the document begins]	Revised
* * * * *				
Section 127.206	ERC general requirements	9/3/11	[Insert Federal Register publication date] [Insert	Revised

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			<u>page number where the document begins]</u>	
* * *	* * *	* *		
Section 127.210	Offset ratios	9/3/11	<u>[Insert Federal Register publication date] [Insert page number where the document begins]</u>	Revised
* * *	* * *	* *		

* * * * *

[FR Doc. 2012-16943 Filed 07/12/2012 at 8:45 am; Publication Date: 07/13/2012]